

Maine Citizen Trade Policy Commission



Senator Margaret Rotundo, Co-Chair

Representative John Patrick, Co-Chair

June 2, 2005

The Honorable Olympia J. Snowe
United States Senate
154 Russell Senate Office Building
Washington, D.C. 20510-1903

The Honorable Susan M. Collins
United States Senate
154 Russell Senate Office Building
Washington, D.C. 20510-1903

The Honorable Thomas H. Allen
United States House of Representatives
1717 Longworth House Office Building
Washington, D.C. 20515

The Honorable Michael H. Michaud
United States House of Representatives
437 Cannon House Office Building
Washington, D.C. 20515

Dear Senator Snowe, Senator Collins, Congressman Allen and Congressman Michaud:

The Citizen Trade Policy Commission adopted the following statement unanimously on May 27, 2005. The Commission was established by the Maine Legislature in 2004 to assess and monitor the legal and economic impacts of trade agreements on state and local laws, working conditions and the business environment; to provide a mechanism for citizens and Legislators to voice their concerns and recommendations; and to make policy recommendations designed to protect Maine's jobs, business environment and laws from any negative impact of trade agreements. The Commission includes Legislators from at least two political parties and citizens representing a wide variety of Maine constituencies impacted by trade. (See attached Commission membership list)

Statement on Dominican Republic-Central America-United States Free Trade Agreement (DR-CAFTA)

The Maine Citizen Trade Policy Commission supports international trade. Countries improve overall economic welfare by producing those goods at which they are relatively efficient, while trading for the rest. Trade can improve productivity, lower the price of consumer goods, and

increase consumer selection, potentially benefiting both workers and consumers. Larger global markets for Maine products can help maximize the benefits of trade for Maine workers and consumers.

However, in recent years trade agreements such as the North American Free Trade Agreement have created both winners and losers. That has been apparent in Maine, with scores of closed factories, thousands of jobs lost to the surge of imports, and many communities struggling to survive. Globalization may be inevitable, but the details of any trade agreement are not. Because the rules of globalization reach far beyond border measures such as tariffs and quotas, potentially impacting every realm of public policy, the details of a trade agreement should be publicly accessible and critically examined before we decide whether or not to support it. Public scrutiny will strengthen, not undermine, globalization.

The Maine Citizen Trade Policy Commission believes that trade agreements should:

- Promote and strengthen basic human rights, labor rights, and environmental protections, and raise standards in developing countries in order to prevent a “race to the bottom” which hurts Maine businesses, workers, and communities.
- Safeguard local and state lawmaking authority and level the playing field for small businesses in Maine and elsewhere.
- Guard against the unintended consequence of impeding access to basic human services such as education, healthcare, energy, and water.
- Be negotiated in a public and transparent manner.

DR-CAFTA does not meet our standards for an acceptable trade agreement for several reasons. We are particularly concerned with DR-CAFTA’s impacts on our state sovereignty and labor standards across the region. During two public hearings on DR-CAFTA held in Bangor and Portland over the past several months, we heard citizen testimony that ranged widely in scope, but was overwhelmingly opposed to DR-CAFTA. People worried about economic issues such as outsourcing, labor standards, and impacts on small businesses, but also voiced concerns about the possibility of maintaining and creating policies pertaining to public services, environmental protection, prescription drugs, municipal zoning, and social security. Many people also spoke about DR-CAFTA’s impact on Central America’s small farmers, many of whom would be forced to abandon their land for factory work in sweatshop conditions in their own countries or emigrate to the United States. Others were concerned that there is no avenue for meaningful public input in trade negotiations. Many people urged the Commission to take a stand against DR-CAFTA and recommend that Maine’s Congressional delegation votes against it. For a summary of the public hearings, please see: <http://www.state.me.us/legis/opla/citpol.htm>

Based on our own analysis of DR-CAFTA and the concerns of the citizens and constituencies we represent, we urge you to actively work against the passage of DR-CAFTA. At a time when several Maine communities may be facing dramatic job loss and disruption as a result of proposed military base closures, we would only compound our problems with a trade agreement that will diminish opportunities for those who need them the most. While Maine can make its voice heard on the question of military base closures and possibly influence the final decision, DR-CAFTA has been created through a process that completely excludes citizens and elected

representatives from meaningful participation, and contributes to the lack of trust and confidence that citizens have about trade agreements.

Higher quality trade agreements that meet the Commission standards require state and citizen discussion of trade policy and an avenue for our concerns to be heard in trade negotiations. Maine joins many other states in requesting regular and meaningful consultation with the United States Trade Representative office to correct the democracy deficit in trade negotiations. We are deeply appreciative of the role Maine's Congressional delegation has played in fighting for fair trade agreements that promote the interests of Maine workers, businesses, and communities. We look forward to working with you to develop a new trade negotiation process that is democratic and transparent, and accountable to the diverse voices and interests in Maine.

Sincerely,

Senator Margaret Rotundo
Co-Chair

Representative John Patrick
Co-Chair

Cc: Rob Portman, Ambassador, United States Trade Representative
Governor John E. Baldacci
Members, Citizen Trade Policy Commission
Alan Stearns, Senior Policy Advisor, Office of the Governor

Appendix

The following sections on “Democracy and Sovereignty Issues,” “Labor and Small Business Issues,” “Impact on Central America and Consequences for Maine,” and “Process of Trade Negotiations” contain our analysis and concerns about DR-CAFTA. The Appendix should not be read as an exhaustive analysis or a comprehensive view of the DR-CAFTA issues relevant for Maine.

Democracy and Sovereignty Issues

International trade agreements such as CAFTA, NAFTA, and GATS would make it possible for global corporations to override local controls on development, zoning and planning. Such agreements may also be used to override local and state environmental regulations, as well as national labor and safety standards.

-- Valerie Carter, Ph.D., CTPC Public Hearing, Bangor, February 3, 2005

DR-CAFTA’s Chapter 11 (Cross-Border Trade in Services) could weaken Maine’s regulatory authority. Like the General Agreement on Trade in Services (GATS), it requires signatories to ensure “conformity of all laws, regulations, and administrative procedures” to the agreements (Agreement Establishing the WTO, Article XVI: 4). Thus, when a country commits a specific service sector to DR-CAFTA rules it must conform its domestic policy – including laws, regulations, administrative decisions, and even unwritten practices maintained by all levels of government: central, regional, and local – to the requirements of the trade agreement. The rules also apply to non-governmental authorities in exercise of power delegated by governments, including professional associations, boards of hospitals, schools, universities, and standard-setting bodies (CAFTA, Article 11.1.2). Furthermore, while only those services explicitly committed are covered by DR-CAFTA’s rules, DR-CAFTA’s scope is tied to the scope of GATS, and GATS mandates continuous rounds of renegotiation to increase liberalization of trade in services and pressure countries to remove exceptions to GATS rules and commit ever more service areas to the Agreement. As GATS expands, so will regional trade agreements, such as DR-CAFTA.

The expansion of GATS rules may also impact future interpretations of DR-CAFTA provisions. A World Trade Organization working group on domestic regulations is currently working on new “disciplines” on domestic regulations that may include a “necessity test” and a list of “legitimate objectives” that would be used to assess the level of trade-restrictiveness of a government measure. If and when finalized, the GATS disciplines would be directly imported into DR-CAFTA according to DR-CAFTA Article 11.8 (3). Professional licensing, qualification requirements, and technical standards governing hospitals, nursing homes, physicians, nurses, or HMOs that ensure the quality of healthcare delivery may have to face necessity tests. Currently, the United States has committed to necessity tests for accounting, engineering, and architecture that may become a precedent for other sectors, including healthcare. The domestic regulation rule can ultimately be used to challenge the federalist system of separate state laws that promotes diversity and encourages states to act as “laboratories of democracy.” A challenger could claim

that a state law is more burdensome than necessary if there are less stringent laws in other states with similar conditions.

Investment Rules

[NAFTA's Chapter 11 provisions] have raised serious problems with the ability of state and local governments to take constitutional actions to protect public welfare and the environment. These provisions compensate disappointed investors from other countries under a vague standard that is potentially much more expansive than that available for domestic investors who claim a regulatory taking in our courts. In effect, these provisions may require government to pay foreign investors for the right to enforce its environmental regulations.

-- Maine Attorney General Steven Rowe, August 25, 2002

As a state that values clean air, clean water and clean energy, Maine often leads the country in enacting progressive environmental laws. For example, during the last session, the Maine legislature passed "An Act to Protect Human Health by Reducing Exposure to Arsenic." This law speeds the phase-out of arsenic treated lumber. Arsenic is known to cause cancer, and children are exposed to it when they play on jungle gyms and decks built with arsenic-treated lumber. The Maine Bureau of Health found health risks from arsenic in pressure-treated lumber were just as high as the risks from exposure to arsenic in drinking water. Under NAFTA, it's possible that a Canadian corporation that produces arsenic-treated lumber could sue the U.S. over the Maine ban because of lost market share.

-- Maureen Drouin, Northeast Regional Representative, Sierra Club, CTPC Public Hearing, Bangor, February 3, 2005

Modeled on NAFTA's Chapter 11 investor-state dispute resolution mechanism, DR-CAFTA's Chapter 10 investment rules give a foreign investor the right to seek monetary compensation for a federal, state, or local regulatory action the company alleges to be either a direct or indirect expropriation of their profits. Because these investment rules include more expansive property rights than the United States Constitution grants domestic businesses, DR-CAFTA's Chapter 10 appears to violate the "no greater rights" for foreign investors mandate included in the 2002 Trade Promotion Act.

DR-CAFTA Chapter 10 in effect redefines public regulation as a government "taking" of private property that requires compensation to the owner, just as when a government takes private land for a highway or park and has to pay its fair market value. Because DR-CAFTA Chapter 10 includes broad standings language, allowing a domestic corporation with substantial business interests in another party to use the investor-state dispute resolution mechanism to challenge a domestic law, a Central American subsidiary of a U.S. company could potentially use DR-CAFTA to challenge Maine laws it considers to be "tantamount to expropriation."

For example, a casino based in a DR-CAFTA member country, or with substantial business interest in a DR-CAFTA member country, could challenge state restrictions on gambling. In the recent GATS gambling case against the United States brought by Antigua and Barbuda, the World Trade Organization Appellate Body ruled that the United States had made a GATS commitment to open up all forms of gambling to international competition, but did allow for the

United States to use the GATS Article XX “public morals exceptions” to defend certain restrictions on gambling. However, DR-CAFTA’s Chapter 10 does not provide for a public morals exception. The State of Maine maintains strict limits on “games of chance” and gambling via electronic video machines that appear to violate DR-CAFTA Market Access rules that prohibit quantitative limits on, and exclusive suppliers of, committed services.¹ These limits and Maine’s future ability to regulate gambling appear to be at risk in the event of a challenge under Chapter 10 of DR-CAFTA²

Access to Public Services

Do trade treaties like CAFTA and the North American Free Trade Agreement (NAFTA) and the General Agreement on Trade in Services (the GATS) make Social Security privatization a one-way street? Could they 'lock-in' even partial privatization forever? It is important to note that these questions are not partisan ones. Whether or not one supports the proposed privatization of Social Security makes little difference in this discussion. What this Commission deals with and what makes the Commission so important is asking the question, "How might these trade agreements affect us in our day to day lives?" That is something I think we can all get behind.

-- Alexander Aman, CTPC Public Hearing, Bangor, February 3, 2005

Expansion of DR-CAFTA rules to cover traditional public services such as water, sewer, environmental protection and education could require extension of public subsidies to foreign private competitors. DR-CAFTA’s national treatment rule requires governments to allow foreign service providers to compete on equal terms with local public providers for taxpayer funds. For example, a foreign corporation bidding to provide water delivery services in a Maine municipality must be given the same favorable treatment as the public agency that traditionally has provided the service, including public funding and access to infrastructure. The low bidder wins. The result could be privatization of water delivery services. Privatization would be a one-way street. Once a public service has been opened to free trade, the price for closing the market to foreign access is to pay the investors what they would have made had it remained open.

¹ See Title 17, Chapter 14 Games of Chance, available at: <http://janus.state.me.us/legis/statutes/17/title17ch14sec0.html> and <http://www.gambling-law-us.com/State-Laws/Maine/>

² Thank you to Martha Spiess for providing testimony to the Commission on the WTO United States— Gambling decision’s implications for regulation of gambling in Maine. See “Upping the Ante: What does the final WTO U.S.- Gambling decision mean for the democratic regulation of gambling in Maine?” submitted to CTPC Public Hearing, Portland, April 19, 2005. The Commission also heard testimony on the possibility of Maine’s sustainable water withdrawal practices being challenged by a foreign investor. The testimony included an international trade lawyer’s analysis of the agreement between the State of Maine and Great Spring Waters of America Inc., operating as Poland Springs. The lawyer noted that this Agreement “is subject to these international [trade] agreements,” and that “if a conflict arises between the provisions of the Agreement and those of international trade law, the latter would prevail,” possibly threatening democratic control over water in Maine. However, Poland Spring would only be able to use DR-CAFTA’s investor-state dispute resolution mechanism if it, or its parent company Nestle, had resident status in a Dr-CAFTA country. See testimony by Marga Huntington, “Protecting Maine Water from International Trade Treaties,” and Steven Shrybman, “Re: Spring Water Use Agreement and License,” submitted to CTPC Public Hearing, Portland, April 19, 2005.

Proponents of current services rules argue that public services are excluded from GATS and DR-CAFTA's Chapter 11 since the rules do not apply to "services supplied in exercise of governmental authority," which it defines as services supplied "neither on a commercial basis, nor in competition with one or more service providers" (CAFTA, Article 11.1.6). On the other hand, when a government does act on a commercial basis (e.g., charges a fee for the service provided) or in competition with other service suppliers, its activities are to be treated like those of any other private supplier. Maine provides few services exclusively on a non-commercial basis.

Whether or not to privatize is a debate we should have publicly, and a decision we should make democratically. Unless public services are clearly and unambiguously excluded from DR-CAFTA, the Agreement could deprive us of the right to make these decisions, in effect forcing the transformation of public services into tradable commodities.

Government Purchasing Rules

In Governor Baldacci's State of the State address, he talked about how The State of Maine now purchases 40% of its electricity from Maine's own renewable power resources; that they heat state office buildings with biodiesel, and that they are improving the fuel economy of the State fleet by purchasing more hybrids and smaller vehicles. According to the Governor, these energy savings steps have saved the State \$776,000 in transportation fuel costs and reduced state government greenhouse gas emissions by 8% just in the past two years. Under CAFTA, these preferences could be considered inappropriate trade barriers and challenged.

-- Maureen Drouin, Northeast Regional Representative, Sierra Club, CTPC Public Hearing, Bangor, February 3, 2005

Government procurement rules in DR-CAFTA Chapter 9 limit the use of non-economic criteria for government purchasing, depriving the public control over the use of public funds, and diminishing the value of government procurement as a public policy tool. The rules may conflict with Maine policies, initiatives, and preferences such as:

- Recycled paper and fuel efficient cars, because technical specifications must be limited to "performance requirements;"
- Products made in non-sweatshop conditions, because supplier qualifications must be limited to their "legal, technical and financial abilities" to fulfill a procurement and may not include criteria related to the methods of production;
- In-state suppliers, because our trading partners' suppliers must be accorded treatment "no less favorable" than the "most favorable treatment" we give to domestic suppliers; and
- Banning state contractors from shipping jobs overseas, because contractor conditions to "encourage local development" are forbidden.

While the State of Maine has opted, at this time, not to allow USTR to offer Maine's government procurement market to DR-CAFTA parties and would not need to adhere to its government procurement rules, it is also of concern that federal government procurement policies would have to conform to DR-CAFTA's Chapter 9 rules. Unless changed through DR-CAFTA implementing legislation or exempted in the Agreement, such policies as Buy America laws and

the prohibition of federal acquisition of products produced by forced or indentured child labor (by Executive Order 13126) could be subject to challenge.

Labor and Small Business Issues

“[The] differences between the rights of business and the rights of labor are enormous [in CAFTA]. When injuries happen to commercial or business interests, countries are severely punished through trade sanctions that are equal to the original injury. These can be enormous. For example, Europe is currently in the position of levying \$4 billion in trade sanctions against the U.S. Fines for labor rights violations are miniscule in comparison, as they are capped at \$15 million. Worse yet, the violator gets to pay itself! Though this fine is supposed to be used to help the country correct the violation of labor rights, there is nothing in the agreement to prevent a country from paying itself a fine, then shifting money from one budget to another and so effectively side-stepping the intent of the fine.”

-- Jack McKay, President, Greater Bangor Area Central Labor Council, CTPC Public Hearing, Bangor, February 3, 2005

I am willing to compete with any worker in the world for labor... But I do not want to compete with children who are forced to beg for their existence when they lose vital body parts. I do not want to compete with companies that are allowed to pollute the air and water to gain a price advantage. Give us trade agreements with level playing fields... and Maine will compete and survive. We will have a shoe industry, garment manufacture, a growing paper industry, family farms and a place for my business too. Then Maine will truly be "the way life should be."

-- Allyn Beecher, Owner, Monroe Millworks, CTPC Public Hearing, Bangor, February 3, 2005

Export processing zones, where *maquila* factories operate and mostly women 15-25 years old provide cheap labor under poor conditions, are already prevalent throughout Central America. These zones would expand dramatically under DR-CAFTA. Widely acknowledged human rights abuses in these zones include non-enforcement of health, safety, and labor regulations, hostility toward union organizing, excessive working hours, and dangerous working environments. Human rights monitors such as the U.S. State Department, the International Labor Organization, and Human Rights Watch have recognized that labor law enforcement in many Central American countries is inadequate.

While DR-CAFTA should require national labor laws to meet International Labor Organization core standards, such as the right to organize unions (“freedom of association”) and bargain collectively, its Article 16.1 calls on parties to “strive to ensure” such standards, only requiring that parties enforce their existing labor laws. However even this requirement is compromised by:

- Article 16.2.1(b), which gives each party “the right to exercise discretion with respect to investigatory, prosecutorial, regulatory, and compliance matters and to make decisions regarding the allocation of resources to enforcement with respect to other labor matters determined to have higher priorities.” Thus parties can decide to not enforce key portions of

their existing labor law by allocating resources elsewhere. Article 16.6.7 ensures that any such decision not become the subject of an arbitral (dispute resolution) panel.

- Article 16.2.2, which does not prohibit a country from weakening its existing labor law protections in order to attract investment. The article only says that countries “shall strive to ensure” that they do not do so. Article 16.6.7 ensures that any such weakening of labor law not become the subject of an arbitral panel.
- Article 20.17, which does not allow DR-CAFTA arbitral panels to suspend parties’ tariff benefits when they violate DR-CAFTA’s labor provisions. If a party violated DR-CAFTA’s commercial provisions, such as the intellectual property rights rules or market access rules, it could face trade sanctions under article 20.16. But even if a country systematically refused to enforce its own labor laws, it would only face fines, capped at \$15 million annually as long as the violation continues. Because tariff benefits can only be suspended if a party fails to pay a fine, not because it fails to address a violation, there is no way to compel remediation. A country can choose to pay a fine indefinitely and enjoy DR-CAFTA benefits while systematically failing to enforce its own labor laws. Furthermore, the fines would be given back to the violating country “for appropriate labor ... initiatives, including efforts to improve or enhance labor ... law enforcement.” However, DR-CAFTA does not prohibit a violating party from simultaneously redirecting existing funds away from labor law enforcement. Thus the net result of labor law violations could be zero.

It is important to note that DR-CAFTA is a step backward from existing trade related labor protections in the region. Currently, the General System of Preferences and the Caribbean Basin Initiative directly condition market access on respect for International Labor Organization core standards. The credible threat of reduced trade benefits is responsible for most significant labor reforms in Central America over the last two decades. CAFTA would destroy the only proven effective means to raising the bar for workers in the Americas.

Central America is already a very small export market. The largest market, the Dominican Republic, is equivalent to Bakersfield, California; the smallest, Nicaragua is equivalent to Lawrence, Kansas. Portland’s market size is larger than Honduras, fifth on the list, and Bangor’s is larger than Nicaragua’s.³ The region as a whole is Maine’s 13th largest trading partner; the region without the Dominican Republic is Maine’s 29th largest trading partner.⁴ The weak labor standards in DR-CAFTA will do nothing to increase the significance of this export market for Maine businesses. Export production workers in Central America – that is, those workers whose wages and living standards could be directly impacted by trade agreements – usually earn no more than legal minimum wages which are barely sufficient to meet the basic food requirements of a family, let alone other basic needs. Tying trade benefits to payment of non-poverty wages, or even median wages for the country of manufacture, would be one way to increase the market size of this region, potentially benefiting Maine export businesses. However, DR-CAFTA’s labor provisions will only accelerate the race to the bottom, depriving Maine businesses of the potential benefits of a trade agreement with stronger labor standards.

³ See: http://www.usmayors.org/metroeconomies/0703/metroecon_appendix_0703.pdf and http://www.americaneconomicalert.org/view_art.asp?Prod_ID=1921

⁴ Source: Maine International Trade Center

Impact on Central America and Consequences for Maine

“When we lived in the village [of Carasque, El Salvador] it soon became apparent that ... the majority of Salvadorans are not entrepreneurs looking for a low tariff environment for exporting their products. They are subsistence farmers who grow corn, rice, and beans to feed their families, and try to sell their extra at market to buy other staple items, shoes and medicines. For these people free trade agreements like CAFTA mean freedom for them to compete with subsidized agribusinesses from the U.S., which have driven the price they can get for their corn lower than their cost to produce it, even if one discounts their labor as entirely free.”

-- Katherine Kates, Bangor-El Salvador Sister City Project, PICA, CTPC Public Hearing, Bangor, February 3, 2005

As all trade agreements, DR-CAFTA will create both winners and losers. In Central America, the beneficiaries of DR-CAFTA are likely to be large importers of foodstuffs and manufactured goods, bankers and other financial groups that mediate the investments of foreign corporations, owners and developers of free-trade zone assembly plants, those who profit from the sale of public government services to private businesses, and those who profit from selling these services to their countrymen. These groups belong to the wealthiest sectors of Central American society.

The large majority of the population, small subsistence farmers, will face a flood of imported U.S. agricultural products that may destroy their livelihoods.⁵ Under DR-CAFTA over half of current U.S. farm exports to Central America would become duty free immediately, including cotton, wheat, soybeans, certain fruits and vegetables, and processed food products. Other agricultural products have a gradual tariff phase-out schedule, with up to 20 years for products such as rice and dairy. Tariffs on yellow corn, a key subsistence crop and source of income for many Central American farming communities, would be completely phased out in 15 years, down from the current high of 45 percent tariffs.⁶ The consequences for small farmers will be hunger, disruption of families and communities, and exploitation in sweatshops or a dangerous trek north. In the terms of the U.S. Congressional Research Service: “...countries dependent on small subsistence farms require time to accommodate the structural adjustment taking place as their economies transition toward larger farms, manufacturing, and services.”⁷

This “structural adjustment” in Central America will have consequences for the United States and Maine. Increasing the cheap labor supply for manufacturing in Central America will contribute to downward pressure on wages and work-related benefits in the region and increase competitive pressures on Maine businesses that now provide wages adequate for Maine workers and families.

⁵ See “DR-CAFTA & Agriculture: Will the *campesinos* survive?,” Oxfam America, March, 2004, http://www.oxfamamerica.org/pdfs/cafta_ag_brief0404.pdf.

⁶ The source for all figures in this section is the United States Department of Agriculture, Foreign Agricultural Service, United States-Central America-Dominican Republic Free Trade Agreement Commodity Fact Sheets, March 2005.

⁷ Hornbeck, J.F., “The U.S.-Central America Free Trade Agreement (CAFTA): Challenges for Sub-Regional Integration,” Congressional Research Service Report for Congress, June 1, 2004.

Furthermore, when small independent farms are squeezed out of markets and small farmers are pushed off their land by giant agribusinesses, and when export-oriented economies stimulated by free trade agreements fail to create enough new good jobs to replace all those that are eliminated, the pressure to migrate legally or illegally increases. Unauthorized immigration from Mexico to the United States increased sharply after NAFTA's implementation, more than doubling between 1990 and 2000, as more than 1.5 million Mexican peasant farmers were forced to abandon their land.⁸ Similarly, DR-CAFTA is likely to increase immigration to the United States from Central America.⁹ Immigrant workers in the United States, especially those with illegal status, face numerous challenges including low-paying jobs, discrimination, exploitation, inadequate access to social services, and limited legal rights, challenges that are exacerbated for those immigrants that do not have legal status. This issue was brought to light in Maine in September 2002, when 14 loggers from Honduras and Guatemala perished as their van, traveling at an unsafe speed, slipped off a one-lane bridge into the Allagash River. The immigrants were coffee growers and rural workers in their home countries; in Maine they were planting and harvesting pine trees destined for paper mills. Desperate to pay off large loans to recruiters who brought them to the United States and to send remittances back home to their families, the loggers were speeding to extend the working day. Their employer had been cited numerous times by the Department of Labor's Wage and Hour Division for unpaid overtime work, and has now lost its license to operate for failing to ensure the safety of workers.

Process of Trade Negotiations

As a citizen who helped to make this Commission possible I ask you to insert Maine's human voice in those [trade] negotiations wherever possible. Specifically, please investigate and raise questions about whether Maine people really benefit by having health care, including state healthcare services, covered under any specific trade agreement. Will Maine citizens benefit? Will doctors, nurses, and healthcare providers in general benefit? Will businesses and working people benefit? Will children benefit?

-- Dr. Sara Stalman, CTPC Public Hearing, Bangor, February 3, 2005

Given the far-reaching consequences of DR-CAFTA for state regulatory authority and state policies, the non-transparent and undemocratic trade negotiation process is particularly troublesome. The only formal mechanism for public input into trade negotiations is the United States Trade Representative's Trade Advisory Committee (TAC) system. The system consists of 27 advisory committees that overwhelmingly represent commercial interests: 22 of the 27 committees are industry and agribusiness oriented, with membership consisting primarily of the largest business interests in each sector. Only one committee, the Inter-Governmental Policy Advisory Committee (IGPAC) represents state interests and is well represented by state policy

⁸"Another Americas is Possible: The Impact of NAFTA on the U.S. Latino Community and Lessons for Future Trade Agreements," August 2004, Labor Council for Latin American Advancement and Public Citizen's Global Trade Watch.

⁹ Already, an estimated 500 Salvadorans leave the country every day, bound for the United States. According to a recent Salvadoran newspaper poll, one fifth of the population claims to have plans to leave for the United States this year. See: Estrada, Erick and Iraheta, Boris. "Alta emigración de los salvadoreños." *La Prensa Gráfica*, March 6, 2005. <http://www.laprensagrafica.com/dpt15/Noticias/06032005/141033.asp>

makers. While USTR consults regularly with industry advisory committees that frequently draft key sections of the trade agreements, IGPAC has very limited influence.¹⁰

Furthermore, the TAC system disallows public debate and participation. TAC members must keep all information regarding pending agreements and TAC discussions confidential until after the agreement is signed. Ironically, the security clearance that public officials must submit to in order to become members of IGPAC means that they are forbidden to disclose the draft texts of negotiated agreements, preventing those with the most complete and up-to-date information from using that information to inform the public dialogue. USTR itself is not subject to the Freedom of Information Act or the Administrative Procedures Act. Consequently, no records exist of TAC discussions, how often committees meet, who testifies before USTR, what they say, and how it impacts the drafting of the text.¹¹ And Congress, operating under the constraints of “fast track” or the President’s Trade Promotion Authority, is limited to 20 hours of debate on trade agreements and a straight up or down vote. Congress cannot modify an agreement, but must reject it entirely to have it modified.

We are concerned that the policy making process for DR-CAFTA has suffered from these problems, that the agreement has been crafted without the benefit of full public discussion and participation, and that the voices and interests of Maine workers, businesses, and citizens are not adequately reflected in it. Maine's Congressional delegation has frequently been in the forefront of debates on trade, globalization, and the reach of federal trade negotiating authority. We deeply appreciate the time and attention that the delegation has devoted to these questions so integral to our economy and democracy. At this point, the low level of disclosure and public discussion regarding the United States trade negotiating agenda, and USTR's weak accountability necessitate a review of USTR's negotiating mandate and federal-state consultation mechanisms. We urge you to continue to exercise leadership in Congress to help defeat DR-CAFTA and work with us to ensure that the process for future trade agreement negotiations is democratic and transparent, and reflects the diverse interests and concerns of Maine workers, businesses, and citizens.

¹⁰ Gerbasi, Jennifer and Warner, Mildred, “Is There a Democratic Deficit in the Free Trade Agreements?” *Public Management*, March 2004.

¹¹ Ibid.